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No. 81-1857

In the Supreme Court of the United States

OCTOBER TERM, 1982

STATE OF OREGON,

Petitioner,

v.

JAMES EDWARD BRADSHAW,

Respondent.

On Writ of Certiorari to the Court of Appeals of the State of Oregon

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED APRIL 5, 1982
CERTIORARI GRANTED NOVEMBER 1, 1982

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The following opinions and orders have been omitted in printing this appendix, because they appear on the following pages of the printed petition for certiorari:

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Oct. 27, 1980 — District Attorney's Information filed in Circuit Court for Tillamook County, Oregon, accusing Bradshaw of manslaughter in the first degree, driving while under the influence of intoxicants, and driving while revoked.

Dec. 9-10, 1980 — Pretrial hearing and trial to court. Bradshaw found guilty as charged.

Feb. 23, 1981 — Judgment entered. Bradshaw sentenced to seven years on manslaughter charge, with three years to be served before possible parole; to three years, to be served concurrently, on driving while revoked charge; and to time already served in county jail on driving while under the influence charge.

Mar. 20, 1981 — Bradshaw's notice of appeal filed.

Dec. 1, 1981 — Opinion of Oregon Court of Appeals entered, reversing circuit court and remanding for new trial.

Dec. 31, 1981 — State's petition for reconsideration or review filed.

Jan. 14, 1982 — Order of Court of Appeals entered, denying reconsideration.

Feb. 3, 1982 — Order of Oregon Supreme Court entered, denying review.

Apr. 5, 1982 — State's petition for certiorari filed.

Nov. 1, 1982 — Certiorari and Bradshaw's motion for leave to proceed *in forma pauperis* granted.

DISTRICT ATTORNEY'S INFORMATION

[filed October 27, 1980]

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF TILLAMOOK

STATE OF OREGON, Plaintiff,	)	NO. 20-214
vs.	)	DISTRICT ATTORNEYS [*sic*] INFORMATION
JAMES EDWARD BRADSHAW, Defendant.	)	ORS 163.118 Class A Felony ORS 487.540 Class A Misdemeanor ORS 487.560 Class C Felony

COUNT I

The above named defendant is accused by this information of the crime of MANSLAUGHTER IN THE FIRST DEGREE committed as follows:

The said defendant on or about September 13, 1980 in Tillamook County, did unlawfully and recklessly, under circumstances manifesting an extreme indifference to human life, cause the death of another human being, to wit: Lowell Clifford Reynolds, by driving a motor vehicle in which the said Reynolds was a passenger at a time when defendant Bradshaw was under the influence of intoxicants, by driving said motor vehicle off the highway and causing it to strike a tree and come to rest upside down in a ditch, near milepost 48 on Highway 101 North near Rockaway, Oregon, and by failing to obtain medical attention for the said Reynolds or otherwise assist Reynolds, who was injured as a result of Bradshaw's driving,

COUNT II

As part of the same act and transaction the above named defendant is accused by this information of the crime of DRIVING WHILE UNDER THE INFLUENCE OF INTOXICANTS, committed as follows:

The said defendant on or about September 13, 1980 in Tillamook County did unlawfully drive a vehicle upon a highway, to wit: Highway 101 North near milepost 50 in Rockaway, Oregon while under the influence of intoxicants, the said defendant having been previously convicted of a traffic crime, to wit: Driving Under the Influence of Intoxicants on January 26, 1979 in Multnomah County, Oregon,

COUNT III

As part of the same act and transaction the above named defendant is accused of the crime of DRIVING WHILE REVOKED committed as follows:

The said defendant on or about September 13, 1980, in the said county of Tillamook, did unlawfully and feloniously drive a motor vehicle upon a highway, to wit: Highway 101 North near milepost 50 in Rockaway, Oregon, during a period when his license to drive a motor vehicle in this State has [*sic*] been revoked by the Circuit Court of the State of Oregon for Columbia County, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Oregon.

Dated October 27, 1980.

[Signature omitted in printing]

TRANSCRIPT OF PRETRIAL HEARING

(excerpts)

IN THE CIRCUIT COURT OF THE
STATE OF OREGON
FOR THE COUNTY OF TILLAMOOK

[Title of case omitted in printing]

[December 9, 1980]

[10]

* * * * *

MR. GROVE: Your Honor, at this time the State has asked that the Court hold a pre-trial hearing with regard to the admissibility of statements made by the defendant. I believe that that type of hearing is allowed by and encouraged by *State v. Brewton* [238 Or. 590, 395 P.2d 874 (1964)] and if Mr. Bassett has no objection, I would like to proceed at this time.

* * * * *

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* * * * *

* * * I think, your Honor, in order to set the historical background for the statements made to Trooper Rainey, I am going to have to go through how the statements were obtained Sunday night, show the condition that the defendant was in, the atmosphere that he was in and basically set the circumstances for the Court to set — basically show how that lead [*sic*] up to statements given to Trooper Rainey.

THE COURT: All right. So as I understand it then, we have two statements: One on the 14th—

MR. GROVE: Correct.

THE COURT: — in the evening and there's no objection to — regarding the voluntariness of that statement?

MR. BASSETT: Right, your Honor.

THE COURT: Okay. All right. Then with respect to the second statement which is contested, we will proceed to take the testimony regarding that and I will hear any opening statements or remarks you have, if you wish to make them.

MR. GROVE: I will waive any opening remarks at this

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time. your Honor.

MR. BASSETT: I think I should too, your Honor.

THE COURT: All right. You may call your first witness.

MR. GROVE: Corporal Hays.

GERALD LEE HAYS, a witness called on behalf of the State, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GROVE:

Q Will you state your full name for the record, please.

A Gerald Lee Hays. The spelling of the last name is H-a-y-s.

Q And how is it that you are employed?

A I am a corporal with the State Police assigned as Assistant Station Commander out of the Tillamook Patrol Office.

Q How long have you been with the Oregon State Police?

A Not quite ten years.

Q All right. And how long have you been in Tillamook?

A Not quite three years.

Q Okay. In that capacity with the Oregon State Police, did you ever have occasion to come into contact with Mr. Bradshaw, the defendant in this matter?

A Yes, I did.

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Q When was it initially that you came into contact with Mr. Bradshaw?

A Okay. It was on the evening of September 14, 1980, in the City of Rockaway.

Q And what had caused you to come into contact with Mr. Bradshaw?

A I was conducting an investigation on a fatal motor vehicle accident which occurred on — or, was discovered on the 14th of September on Highway 101 just north of Rockaway.

Q Okay. And what led you to Mr. Bradshaw? Why was it that you were coming into contact with him?

A The deceased lived in a cabin owned by Irma Stockdale in Rockaway. I had gone to that cabin with hopes of identifying the deceased's next of kin, his parents. I had contacted Officer Buxton from the Rockaway Police Department for his assistance in locating this next of kin and he had advised me that there had been an assault reported at the next of kin's — or, at the deceased's cabin in the evening of the 13th of September and when we were at the cabin looking for personal effects or something that may lead us to the next of kin, Mr. Bradshaw contacted us there at the cabin and he was identified by the Rockaway police officer that he, in fact, was the individual who had reported to have been assaulted there the evening before.

Q The 13th?

[14]

A The 13th.

Q So this would have been the afternoon or the evening of the 14th when you first came into contact with Mr. —

A Yes, it was the evening of the 14th that I came into contact with Mr. Bradshaw.

Q Do you remember the — that initial conversation out at the cabin or did you have much conversation with him there?

A We had some conversation with him there. It was — mainly I was discussing, you know, why I was there and he had known the deceased, Mr. Reynolds, and we talked about, you know, his acquaintance with him and whatnot. It was kind of idle conversation and then we went into — it got carried on into actually the assault case itself and we went into the cabin and he showed me and — or, Officer Buxton and myself where he had been assaulted and whatnot when we got into the cabin, so the idle conversation actually led into the assault that occurred the night before.

Q Okay. He indicated he had been assaulted the night before; is that correct?

A That's correct, and in the cabin there that was rented by the deceased.

Q Okay. Did he indicate to you who had assaulted him?

A Yes. He gave me three names and a picture was identified in the cabin which he pointed out as the deceased's girlfriend, Kimberly Asher. Her full name is Kimberly, but he gave the

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name of Kim Asher. There was a picture laying on the table there and I asked him if this was the girl that was there the night before and he said it was. There were two men, one who he identified by the name of Bash, B-a-s-h. He didn't know the individual's first name, but he just remembered that the last name was

Bash or the name was Bash that he remembered. The third individual was a man who he could not identify. He just described him as a middle-aged man, standard features. The fourth individual that was there in the cabin other than the deceased was a girl which he identified as the deceased's sister by the name of Cynthia or Cindy. He didn't know her last name, but these were the four people in addition to the deceased that were in the cabin at the time the assault occurred.

Q Okay. Did he indicate which one of them allegedly assaulted him?

A Yes. It was his opinion and he explained that the statement which was made just prior to him being hit on the head was, I believe, "Bash, don't do that," or, "Bash, don't hit him," so it was his opinion that Bash was the one who did the assault.

Q Okay. What did you do then after having this conversation with the defendant?

A We — I had previously, during my investigation that afternoon, contacted the deceased's girlfriend, Kimberly Asher.

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The purpose of contacting her was to let her know of the boyfriend's death and there was some inconsistencies with what Mr. Bradshaw had told me and with what she had told me as far as who had been present the evening before.

Q Did she indicate she had been to the cabin the evening before?

A No. She claimed she was working, which was verified by her employer, that evening.

Q Okay.

A While I was at the cabin and had talked to Mr. Bradshaw, the individual mentioned before, Mr. Bash, who turned out to be Mr. David Bash, showed up at the cabin. He had heard also through friends that Mr. Reynolds had been killed and that we wanted to talk to him and I talked to him at the cabin that evening and he had told me that — his story was inconsistent with Mr. Bradshaw's. He had been at a party on the Kilchis the evening of the 13th and was with several friends who said they would be glad to verify his whereabouts. The two inconsistencies at that time with Mr. Bradshaw's statement — the question of what actually had occurred on the evening of the 13th and I at that time asked Mr. Bradshaw if he would be willing voluntarily to accompany me to the Rockaway Police Department where we can hold a taped interview and which he acknowledged he would voluntarily.

Q At that time was he in custody?

[17]

A No, he was not. I made it very clear to him he was not in custody. He was free to leave. In fact, he had indicated that he was leaving for St. Helens that night and I told him that, you know, this was a voluntary-type thing,

but we wanted to clear up the matter and he agreed. He wanted to clear the matter up and there was some question about the accident and he agreed to accompany me to the Rockaway Police Department.

Q Okay. Maybe — just for the Court's clarification maybe you can go back and just very briefly indicate what was found at the scene of the accident and what made you think that perhaps somebody else was driving the car.

A Well, at the scene of the accident — it was a one car — or, one pickup accident. It occurred on — northbound on Highway 101. The vehicle had gone off the road, struck a tree, and the deceased, Mr. Reynolds, was pinned on the passenger's side through the window, partially through the window when I arrived at the scene. There was — the fact of the location of the body and whatnot drew some suspicion. It was not a natural type of position that I would find on that type of an accident. I became concerned and then finding the inconsistencies of the stories and whatnot caused me to become more curious about actually what did happen.

Q Okay. When you went down to the Rockaway Police Department then, would it be fair to term Mr. Bradshaw as a suspect at that time?

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MR. BASSETT: I think that's an improper conclusion he is asking, your Honor. Did he suspect from what he saw.

THE COURT: Well, you may rephrase the question.

Q BY MR. GROVE: All right. When you took him down to the Rockaway Police Department, was it your intent to question him further about the automobile accident and the events that had transpired the night before?

A Yes, it was. The inconsistencies at the accident scene and the inconsistencies with Mr. Bradshaw's alleged assault drew my suspicion, so there was — I was — I did have in my mind to further investigate the possibility of some problems that actually had occurred the night before.

Q How did he get down to the Rockaway Police Department?

A I transported him in my patrol car.

Q Was he handcuffed?

A No, he was not.

Q Did he ride in the front or back seat that you recall?

A In the front seat.

Q When you got to the Rockaway Police Department, did you then take a statement from him?

A Yes, I did.

Q And was that statement taped?

A Yes, it was.

Q All right. Prior to the time that you made the taped statements, did you make any threats, promises, or inducements

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to Mr. Bradshaw in order to get him to talk to you?

A No, I did not. In fact, as indicated on the tape, I made it very clear that this was a voluntary type of thing, that he was — and he agreed he was not under duress, under any threats of any type, that he was being recorded and he fully understood what was going on.

Q All right. I want to hand you what has been marked —

THE CLERK: Exhibits one and two are marked for identification.

(State's Exhibit number one marked for identification.

(State's Exhibit number two marked for identification.)

Q BY MR. GROVE: — marked for purposes of identification as State's exhibit number one and ask if you can identify that as the tape that you made of your conversation with Mr. Bradshaw.

A Yes, it is. It has my name, the date and identifying features of the tape on there.

Q All right. At this time, your Honor, I would ask permission to play the tape for the Court.

THE COURT: All right. This is the first conversation regarding which there is no objection?

MR. BASSETT: Yes, your Honor.

MR. GROVE: That's correct, your Honor, but again I

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think it's necessary to — and I also have State's exhibit number two. I have talked to Mr.

Bassett about this. This is a transcript of the recording[1] and it may help aid the Court in listening to it.

* * * * *

(Mr. Grove plays tape cassette and the following proceedings were had:)

Q BY MR. GROVE: Now, you indicated, Corporal Hays, that you terminated the interview because Mr. Bradshaw requested an attorney; is that correct?

A That's correct.

Q All right. After that did you have any further conversation with Mr. Bradshaw?

A Yes, I did.

Q Could you tell the Court how that came about happening.

A Well, we had — I had taken him into custody and handcuffed him there in the Rockaway Police Department. I had gone back in the room and —

MR. BASSETT: If it please your Honor, I will object

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to any conversation after they acknowledged that the defendant wanted an attorney when they didn't furnish him one and there was no attorney present after that agreement and I object to any further testimony. He has started to testify to further conversations about it. It's my understanding of the law that you can't do that. Once they have asked for a lawyer

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[1] [This transcript is reprinted at pp. 45-73, below.]

and they have agreed to furnish him one, they can't talk to him any more until the attorney is furnished which never was done.

THE COURT: Okay. I assume that in this line now you won't be attempting to elicit any statements until you have laid a foundation to show a waiver or —

MR. GROVE: A waiver, that's correct, your Honor.

THE COURT: All right. You understand what we are —

THE WITNESS: Yes, your Honor.

THE COURT: Okay. I will sustain the objection regarding any statements until you do lay a foundation which would show then that there had been a waiver or some — and necessary voluntariness and that sort of thing, so —

MR. BASSETT: If it please your Honor, I don't want to persist in this, but my objection was that there can't be a waiver, that there has to be an attorney furnished. Otherwise the rule wouldn't do any good. I want to put that into the record for my objection, that there can't be a waiver.

THE COURT: All right. Well, as I understand the law — I forget the name of the cases, but a defendant can

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change his mind and there can — a waiver can occur, but the foundation will have to be laid to show that that, in fact, is what happened, so you may proceed, Mr. Grove. Overruled.

Q BY MR. GROVE: You indicated you had some conversation with him after he was taken into custody; is that correct?

A Yes. This was — after the end of the tape recording I handcuffed him there in the Rockaway Police Department. Then he asked me at this time — he said, "Well, what is going to happen to me now?"

Q So he talked to you —

A Yes, and I at that point, being familiar with the law that Mr. Bassett was talking about, made it very specific. I says, "You do not have to talk to me. You have requested an attorney and I don't want you talking to me unless you so desire because anything you say — because — since you have requested an attorney, you know, it has to be at your own free will." I says, "I can't prevent you from talking, but you understand where your place — you know, where your standing is here?" and he agreed. He says, "I understand," and — you know, and we had conversation from then on, but I was very specific at this point, being familiar with the law, on his voluntary statements and that's what they were and —

Q Did you make any threats, promises, or inducements to him in order to get him to talk to you some more?

A No, I didn't. As you can tell by the conversation, we

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were being quite — you know, it was a casual conversation throughout the entire thing and

we continued on this basis. There was several comments made about where he was going to go and what he would be charged with and I put him in the police car. I believe I put him in the front seat — I am sure of this — so we could talk and then I proceeded to the Tillamook County Jail and we had a considerable amount of conversation on the way there.

Q Okay. What was the general nature of that conversation?

A Well, we talked about, again, the theory that I had mentioned on the tape about what had happened, the accident, and whatnot and he says — I made the statement — I says, "Well, I can have a polygraph examiner come down and talk to you tomorrow and we can clear this matter up and find out actually what happened." I think he made something — he said, "What do you mean, a polygraph examiner?" and I said, "Well, a lie detector test," and I explained it to him and he said, "Okay. That will be fine. I want to do anything I can to clear this matter up," and these statements, among others, were made. I —

Q But these statements were made after you told him for the second time he didn't have to talk to you because he requested a lawyer?

A Yeah, these statements were made while in route to the county jail in the patrol car. We had conversation all the way there and we talked about several things, the fact that

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he was from Missouri and how long he had been back and he had lived in St. Helens and knew several police officers from St. Helens, I believe, and we had general conversation all the way to the county jail.

Q Maybe I missed a little something. What was his response? He agreed that he wanted a polygraph?

A Yes, he did. After I explained what a polygraph examiner was, he agreed that he would talk to the individual. He told me that he — he said he would do anything he could to help clear this matter up and there was something else about Lowell was his friend and he wanted to take care of the matter and make sure everything got taken care of.

Q Okay. And then you what, you lodged him, did you?

A Yes, he was taken to the Tillamook County Jail where he was lodged at that time for Furnishing Liquor to a Minor.

Q Okay. To the best of your knowledge, would he have had an opportunity to make a phone call to a lawyer had he had the chance?

A Yes, at the jail, I believe. He didn't know one and he wanted to get a hold of Mrs. Stockdale, I believe, Irma Stockdale and he had a couple other things to do because I believe Mrs. Stockdale was leaving that night to go to St. Helens.

Q Okay.

A And he wanted to let them know and — in fact, a police

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officer, I believe, went back to the — and told Mrs. Stockdale that he was in the Tillamook County Jail.

Q Okay. Good. Now, are you aware of the fact that there was a conversation with Trooper Rainey the next day?

A Yes, I was. I had called Lieutenant Winterfeld the next morning at eight o'clock and advised him that I would like to have a polygraph examiner in addition to Crime Lab and other expert people come down and assist me on this investigation and Trooper Rainey did come down to Tillamook the next morning and interviewed Mr. Bradshaw.

Q That would have been the morning of the 15th?

A That's correct.

Q All right. Were you present when that was done?

A No, I was not.

Q All right. Did you inform Trooper Rainey of the conversation that you had with Mr. Bradshaw?

A Yes —

MR. BASSETT: I would object to that, your Honor.

THE WITNESS: — in substance —

MR. BASSETT: I would object to any conversation between this officer and another officer.

MR. GROVE: Well —

THE COURT: Well, as long as the other — you are not going to bring out the other officer's statements, are you, in the absence of the defendant? It's going to be what this

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officer told the —

MR. GROVE: Sure, right.

THE COURT: — the other officer?

MR. GROVE: The other officer, the polygraph man.

THE COURT: Okay. How do you respond to that, Mr. Bassett?

MR. BASSETT: My objection was that this officer is asked if he had a conversation with another officer concerning this case in the absence of the defendant and I would object to that as not binding upon this defendant. It's hearsay.

THE COURT: Well, I will sustain any objections regarding what the other officer said to this officer, but I will overrule the objection regarding what information this witness might have given the other officer preparatory to the administration of any examination or whatever.

MR. GROVE: Right.

THE COURT: Overruled. You may proceed.

Q BY MR. GROVE: Okay. Did you — what did you tell him about Mr. Bradshaw? Did you tell him basically what you —

A Yes, I more or less laid out the entire case of what I knew about it to that point.

Q Okay. Did you inform the — Trooper Rainey, do you recall, of the business about at one point the defendant had asked for a lawyer and at another point indicated he wanted to —

A No, I did not.

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Q And you were not present when the interview was conducted with Mr. Bradshaw; is that correct?

A No, I was not.

Q All right. I have no further questions.

CROSS-EXAMINATION

BY MR. BASSETT:

Q Your Honor, my objection continued through all of this, didn't it? When I objected to any conversation after he requested a lawyer, my objection goes until this moment, does it not?

THE COURT: Well —

MR. BASSETT: I wonder if I could make myself clear. It is my position that once the defendant has asked for a lawyer and once the police have said, "We are going to conclude this interview . . ." — first he said investigation, now interview -- ". . . because you have asked for a lawyer," it is my position, your Honor, that there can be no more questioning of the defendant and I can't support my position on it, but I am of the opinion, contrary to what your Honor said, that you can't waive it, you can't

waive that. I didn't find that case. I did find — in support of my motion I will cite *Vassiouni,* V-a-s-s-i-o-u-n-i — I assume it's *Vassiouni* — On Criminal Law and Its Processes, page 412.

> "The Supreme Court seems to consider in-custody police interrogations as inherently coercive and one might also detect in certain decisions a

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> feeling that such police practices are also deemed inherently oppressive and abusive. The word 'interrogation' in itself connotes a forceful question if not inquisitorial."

I submit that in support of my position, that they have to quit, otherwise, your Honor, the rule would be so diluted it wouldn't be worth anything. If a person asks for a lawyer and they said, "Yes, we will quit and get you one," and then go right on talking and talking when they get to Officer Rainey — and I am going to object to that, too. That was the next day and they still hadn't furnished a lawyer. We are not quarreling about what was said, your Honor. We are quarreling — we are disagreeing on the significance of it. Officer — this officer says that he had a conversation and seemed to persuade the defendant to continue talking and it's my position from a legal standpoint that that can't be done and that is what I base my objection on.

THE COURT: Well, I will — I am going to overrule the objection regarding any statements made up through the end of the officer's testimony at this point. First of all,

none of those statements that have been made in any way tend to incriminate, but that's not the point. At least from what I have heard so far, there was really no interrogation. There is no question in my mind that up to this point — or, between the handcuffing and the end of the witness' testimony that he was in custody, but there is no evidence of any threats or any

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promises. It's clear the defendant was advised of his rights and that he understood them, but in spite of this witness' telling him, "You know, I don't want you to talk with me. You have requested an attorney," the evidence up to this point indicates an insistence of some kind of informal conversation short of any kind of interrogation and I don't know what the testimony regarding Mr. Rainey or, Trooper Rainey will be, but as I have indicated, I know there are cases that indicate that a witness — or, the defendant, once advised of his rights, can change his mind. The police cannot persuade him to change his mind — subtle-type things — and then there are some cases like — I think one of them was *Garrison, State v. Garrison* [16 Or. App. 588, 519 P.2d 1295 (1974)] and *State v. Suggs* [13 Or. App. 484, 511 P.2d 405 (1973)] —

MR. GROVE: The most recent —

THE COURT: — one was out of Washington County —

MR. GROVE: The most recent one I could find, your

Honor, was *State v. Holland* which is 48 Or. App. 367 [616 P.2d 1211 (1980)].

THE COURT: But, anyway, I am assuming that you are going to be proceeding to show or attempt to show that this case falls within one of those exceptions.

MR. GROVE: That's correct, your Honor.

THE COURT: And if you — the question is then can you or will you be unable to and —

MR. GROVE: That's —

THE COURT: — for that reason I will overrule the

[30]

objection and you may cross-examine the witness.

Q BY MR. BASSETT: All right. I understand the rule, but I don't agree with it. Very well, your Honor. Officer, I want to ask you first — it was a little confusing to me — of your position with respect to why you took — invited — you didn't drag him — invited the defendant to the police station.

A Why did I?

Q Yes.

A I wanted to get a statement that I could retain at an area that would be of — a secluded area where I could get a taped statement. We had gone through the incidents up there at the cabin with Mr. Bradshaw and he had told me about essentially the assault and what had happened and there were several names involved, the time lapse and whatnot. I was trying to write down notes and whatnot

and the Rockaway Police Department for me was the nearest place that would be adequate, have facilities, would be quiet and I could get a taped statement of the incidents that had occurred and be as correct as possible with my investigation.

Q Okay. You are explaining the surrounding — I am asking you: How did you view Mr. Bradshaw?

A As a possible suspect.

Q In which crime?

A In the fatal accident.

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Q Did you inquire about him furnishing beer to Mr. Reynolds?

A There had been some talk about that earlier.

Q Where did Mr. Reynolds work?

A At Downie's — at the grocery store in Rockaway.

Q Did you determine that Mr. Bradshaw bought the beer from Mr. Reynolds?

A No, I did not.

Q Okay. Did you know that Mr. Reynolds sold beer in that store?

A No, I did not. He's a butcher, I believe.

Q Yes, he was. Yes, he was, but it's a small store —

A Uh-huh (Yes).

Q — and they kind of trade off. If two employees are gone, they exchange duties. Did you not know that Mr. Reynolds sold beer there?

A I did not know he did.

Q Okay. Now, please explain to me — I am a little confused — about your language on the first paragraph. You say,

"It's just a formal investigation."

Now, those kind of contradict each other. Did you mean, "It's just an informal . . ."? They are your words.

A In my words it was not an interrogation and it was not an idle conversation. It was an inquiry into the facts and I was not interrogating him as a suspect and it was an inquiry into the facts that had occurred the night before and up to that

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point. To me that would be more or less a formal but not an interrogation but more of a formal conversation.

Q Why did you start at the beginning then of reminding him that he had certain rights? You wouldn't do that in a conversation with him, would you?

A I wanted to be sure to cover every possible angle and that at some point he may have said something that may have incriminated him, you know. Being somewhat familiar with the law but not an expert, I wanted to be sure that I covered every angle. It's our policy that whenever we do interview an individual on a serious or possible serious nature [*sic*] like this, that his rights are made available.

Q But you said —

A I did it —

Q Go ahead. Don't let me interrupt.

A I did it to be more than fair or to make sure that there was no question about what we were doing there.

Q Okay. Officer, I am not questioning your fairness.

A Yeah.

Q I am questioning what we say in the law — was he a focal suspect?

A No, he was not a focal suspect.

Q You know your *Miranda* and *Escobedo*.

A Uh-huh (Yes).

Q Was he a focal suspect?

[33]

A No. Had he been a focal suspect, I would not have advised him that he was free to go.

Q Well —

A The definition of "focal" — he was being looked at as possibly involved in a crime, but up to that point — in fact, I did not charge him with the crime of Manslaughter until the next day. He was charged with — I had not yet felt in my own mind up to that point, based on the evidence that I had, to make the charge.

Q But you on the very first page — I am not arguing with you, Officer. On the very first page you were advising him of his rights.

A That's correct.

Q Would you do that if he weren't a focal suspect, if you are just having —

A I was conducting an interview. Yes, probably on nearly all cases.

Q One last thing on that item. When you said, "It's just a formal . . .", did you mean "just" or "formal"?

A Just a formal.

Q You would think "just" would go with "informal", wouldn't you?

A Well, depending on who is looking at it, yes. To me, my words, it was just a formal.

* * * * *

[39]

* * * * *

Q And now — we always say one more thing. Maybe less. On the last page: "And I do want an attorney before it goes much further." Okay. You were here. This is your own report.

A Yes.

Q "A And this is one rap I won't . . ." — he says,

". . . I won't take.

Q Okay.

A Inaudible.

Q At this point there's — since you requested an attorney, we will conclude this investigation. All right. Not the investigation, but the interview."

Now, that did occur, didn't it, Officer?

A Yes, it did.

* * * * *

[41]

* * * * *

[December 10, 1980]

WILLIAM C. RAINEY, a witness called on behalf of the State, having first been duly sworn, was examined and testified as follows:

THE COURT: Please take the stand.

DIRECT EXAMINATION

BY MR. GROVE:

Q Could you state your full name and spell your last name for the record, please.

A William C. Rainey, R-a-i-n-e-y.

Q And could you tell the Court how it is that you are employed.

A I am employed by the Oregon State Police.

Q And how long have you been with the State Police?

A A little over twelve years.

Q Okay. Could you explain for the Court briefly what your main duties are with the State Police at this time.

A I am a polygraph examiner.

Q All right. And in that capacity did you ever have occasion to come into contact —

MR. BASSETT: I didn't hear his answer.

[42]

THE WITNESS: I am a polygraph examiner.

MR. BASSETT: Thank you.

Q BY MR. GROVE: In that capacity did you ever have occasion to come into contact with James Bradshaw?

A Yes, I did.

Q And is that the person seated to my immediate right here?

A Yes, it is.

Q Do you know approximately when it was that you came into contact with him?

A I believe it was September 15th in the late morning hours.

Q Okay. And where was it that you came into contact with him?

A Here at the courthouse.

Q All right. What had caused you to come into contact with him?

A I had been requested through the Tillamook office of the State Police to come to Tillamook and administer a polygraph examination to Mr. Bradshaw.

Q Okay. Was Mr. Bradshaw in custody at that time?

A Yes.

Q Okay. In the Tillamook County Jail?

A That's correct.

Q All right. Did you, in fact, proceed to administer a polygraph examination to him?

A Yes, I did.

[43]

Q Okay. Prior to that time — well, let me ask you this: Where were you when you gave him the examination?

A In the jury room adjacent to the courtroom.

Q Was anybody else with you?

A No.

Q Okay. Were you armed at that time?

A Sir?

Q Were you armed? Did you have a weapon?

A I don't believe so.

Q All right. Prior to Mr. Bradshaw taking a polygraph examination, did you make any threats, promises, or inducements to him to either take the exam or to tell the truth?

A No, I did not.

Q Prior to the time that you administered the examination to him, did you advise him of his rights?

A Yes, I did.

Q And did you have him sign any kind of a form?

A Yes, I did.

Q All right.

THE CLERK: State's exhibit number three marked for identification.

(State's Exhibit number three marked for identification.)

MR. GROVE: May I approach the witness, your Honor?

THE COURT: Yes.

[44]

Q BY MR. GROVE: I want to hand you State's Exhibit number three and ask if you can identify that.

A Yes. This is the advice of Rights statement form that I read to Mr. Bradshaw and after each one I checked off the particular right, showed it to Mr. Bradshaw, which he read and signed his name to.

Q All right. There are a number of rights on that form. Did you inquire of him individually of each one?

A Yes, I did.

Q And did he appear to understand those rights?

A Yes, he did.

Q Did he appear to voluntarily talk to you and make the —

MR. BASSETT: If it please your Honor, before he examines him on that instrument, may I see it —

THE COURT: Yes, you may.

MR. BASSETT: — before he —

THE COURT: You may approach the witness.

MR. BASSETT: — before he has identified it? Shall I —

THE COURT: You may approach the witness and look at it. In fact, if you want to return to counsel table, you may.

MR. BASSETT: Thank you.

(Counsel approaches witness.)

MR. BASSETT: Thank you, Officer.

Q BY MR. GROVE: As I understand it, you went over each one

[45]

of those rights with the defendant; is that correct?

A Yes, sir.

Q Individually?

A Yes.

Q All right. And did the defendant sign that document in your presence?

A Yes, he did.

Q All right. You indicated that you went ahead and gave him a polygraph examination; is that correct?

A Yes, I did.

Q And after administering that examination, what occurred?

A I had cause to discuss the matter further with Mr. Bradshaw.

Q All right. Did you advise him of his rights again or did you —

A No, I did not.

Q Okay. Would you tell the Court what it was that you discussed with Mr. Bradshaw after the exam.

A I explained to Mr. Bradshaw that it was my opinion that he was not being truthful regarding having driven that vehicle. At that time Mr. Bradshaw told me that he now wished to tell the truth about it. He stated essentially that on that particular day, prior to Mr. Reynolds arriv-

ing, he had consumed a quantity of Olympia beer, sixteen ounce cans, and that after Mr. Reynolds arrived he stated that he himself, Mr. Bradshaw,

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went to a liquor store which was apparently close to where they resided and purchased a full fifth and a full pint of Black Velvet Whiskey. He stated that he returned to Mr. Reynolds there at the cabin and that they consumed this fifth and pint together and after having done that, Mr. Reynolds advised Mr. Bradshaw of a party somewhere in the Astoria area and asked if Mr. Bradshaw would like to go along. Mr. Bradshaw stated essentially that he asked Mr. Reynolds if there would be girls at the party. Mr. Reynolds said, "Yes," there would be all kinds of girls and then they left the premises. Mr. Bradshaw told me that he drove because he thought he was in better shape than Mr. Reynolds was. They were proceeding north on Highway 101 and after proceeding — Mr. Reynolds had told him that after proceeding about six miles up the road he was to ask him where to turn and he stated that he never did ask him where to turn because he never got that far. He stated that prior to this six mile area he had passed out and became involved in the accident. He felt that at the time of the accident Mr. Reynolds may have already passed out due to the fact that his speech was slurring and the sounds, the general sound of his voice. He thought that Mr. Reynolds had passed out already. The last thing he

remembered before passing out was that it became black and that the only conversation he could recall was that they were still talking about the girls that would be at this party. After the accident he recalled

[47]

only being injured and that he had lifted his T-shirt up to the back of his head — his head and with his hand had covered the wound that he was bleeding from. He could not recall how he got home, but he stated that he believes or is sure that he had knocked on granny's door — and I am not quite sure who granny is — and essentially that is it.

Q Had you heard anything about granny prior to this time?

A The only thing that I had heard prior was the earlier statement that he had given regarding the incident, but he had told me that the reason that he came up with these names of the people that were to have assaulted him earlier in his original story was he had heard granny talking about them. He said he didn't know them, but he had heard about them through her.

Q Had you heard anything about granny from other police officers prior to that time?

A I don't recall. If I did, it was nothing that I took —

Q Okay.

A — in a statement.

Q Prior to the time that you administered the exam-

ination, did he give you the same story about being assaulted by some people; is that what —

A Yes, he did.

Q All right. Did he indicate that he passed out because he had too much to drink; is that what you said?

[48]

A Yes. I asked him, "Did you pass out because you were drunk?" and his answer was, "Yes."

Q Okay. Did he know what had happened to Reynolds?

A Pardon?

Q Did he know what had happened to Reynolds?

A No, he did not.

* * * * *

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* * * * *

CROSS-EXAMINATION

BY MR. BASSETT:

Q Mr. Rainey, during the examination at the pre-trial I had never talked with you. You had never heard of me or —

A Prior to the —

Q Prior to the pre-trial hearing.

A The preliminary hearing?

Q The preliminary hearing.

A I had not.

Q No. Now, I asked you three times at the preliminary hearing if you knew that the — that Mr. Bradshaw

had asked for an attorney and you said you never heard of it. Do you recall that?

A Yes, I do.

Q And you answered three times that you had never heard of it. If it please your Honor, I am now — I now move to strike all of the testimony of Officer Rainey* * *.

* * * * *

[54]

* * * * *

* * * My motion is based on the *Skelton* case [*State v. Skelton*, 41 Or. App. 497, 599 P.2d 1171 (1979)] and the *Brewton* case [*State v. Brewton*, 238 Or. 590, 395 P.2d 874 (1964)]. The *Brewton* case, which was decided in favor of the defendant, held that the — this kind of conversation with the defendant was impermissible. I am objecting further on the grounds that Mr. Bradshaw was asked if he would take a polygraph and he said, "Yes." Now it turns out that he was brought there to be interviewed with the view to making a confession. That has nothing to do with taking a polygraph.

* * * * *

[55]

* * * * *

* * * [H]ere is this Officer Rainey testifying to a confession made by a man who was only asked to take a polygraph and on those grounds, your Honor, I object to it.

THE COURT: Well, the way I understand this is that even if the — all of the testimony regarding the polygraph

were inadmissible, that in the event this man was fully advised of his rights pursuant to *Miranda* and if he has voluntarily changed his mind from the earlier time when he said, "I want an attorney and I don't want to talk about it," — if in the interim now he is re-advised, he voluntarily changes his mind, then the statement would be — could be admissible * * *.

* * * * *

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* * * [A]s I summarize the sequence of events, first there was a conversation at the cabin. Then we moved to the police department where the defendant was, at the outset of the tape, advised of his rights. Then there was conversation regarding the matter. At the end the witness, Mr. Hays — Trooper Hays explained his theory of the case to the defendant and then again after — immediately after placing the defendant in custody he advised him of his rights. In fact, it should be noted that there had been an interruption in the taped conversation and when the tape was turned back on, the officer said, "We are at Rockaway P.D. and your rights and all those good things. You understand that?" And the defendant answered, "All right. Yeah," but the rights were read two times fully at that — on that day and the evidence shows there were no threats or promises or inducements to make statements at those times. Then on the way back into Tillamook

[65]

after the defendant was in custody there was further conversation and in the course of that conversation Trooper Hays mentioned that he could have a polygraph examiner come down and after the defendant learned what the nature of a polygraph examination was — I think the term "lie detector" was used — then he stated something to the effect, "I want to do what I can to clear it up." Lieutenant Winterfeld was called and apparently this witness came down the next day to administer the test. He again advised the defendant of his rights which would be the third full advice of rights. Again, the evidence shows there were no threats, promises, or inducements and then we arrive at the point where the officer told — or, explained to the defendant that in his opinion from the test, the examination, the defendant wasn't being truthful regarding driving and at that time the defendant said that he now wanted to be truthful about it and the one point I did miss is that at the conclusion of the taped conversation down at the Rockaway Police Station the defendant did say, "And I do want an attorney before it goes very much further," and that is when Trooper Hays promptly concluded the interview, although the evidence establishes that the defendant did continue to talk with Trooper Hays on the way in in spite of the Trooper's admonishing him that he would prefer not to talk with him, that he couldn't talk with him.

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JAMES EDWARD BRADSHAW, a witness called to testify on his own behalf, having first been duly sworn, was examined and testified as follows:

MR. BASSETT: If it pleases your Honor, this witness is being offered in connection with this hearing and for that purpose only.

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. BASSETT:

Q Mr. Bradshaw, will you briefly recount the morning of September 15th, Monday morning —

A Yes, I will.

Q — with Officer Rainey and the polygraph.

A Well, I went downstairs with Officer Rainey to take the polygraph test and we sat there and went through the full polygraph test and after that I was sitting there and asked him how it worked and he said that he could read a polygraph test like I would read a comic strip and after that he said that it was either eleven — or, eleven minus, eleven plus or

[70]

eleven minus that he gave me —

Q Mr. Bradshaw, just a little louder.

A And he said that he had ways of proving that I was driving the truck that night.

Q What else did he say?

A He said that I wasn't telling the truth about it, that they had ways of breaking it down to prove that I was driving the truck —

Q Say that sentence a little louder so we can all hear it.

A He said that they had ways of breaking it down, that I wasn't telling the truth and that they had ways of breaking it down, that I was driving the truck on September 13th, the night of September 13th and that's — to the best of my knowledge, that's what we had talked about after the polygraph was taken.

* * * * *

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WILLIAM C. RAINEY, a witness recalled on behalf of the State in rebuttal, having been previously sworn, was examined and testified as follows:

THE COURT: You are still under oath, sir.

DIRECT EXAMINATION

BY MR. GROVE:

Q You were present in the courtroom when Mr. Bradshaw testified; is that correct?

A Yes.

Q Was his testimony substantially the same as your recollection of the events as they occurred?

A With the exception of one point.

Q Which was what?

A The point that he states that I told him I would be

able to prove that he was driving the truck. Obviously I wouldn't be able to.

Q Okay. You didn't make that statement to him?

A No.

* * * * *

[75]

* * * * *

THE COURT: If I understand your testimony correctly, you deny you said anything about having ways to prove that he was driving?

THE WITNESS: Yes, I do deny saying that.

THE COURT: And you deny saying to the defendant that there were ways to break his story down or to break him down?

THE WITNESS: Yes, I deny saying that also.

* * * * *

[81]

* * * * *

THE COURT: All right. Well, I find that the statements made to Officer — or, to Corporal Rainey are admissible. The evidence establishes that there were no threats, promises, or inducements, that the defendant was properly advised of his rights and that he did understand them and I also find that the evidence supports a conclusion that although Mr. Bradshaw had indicated his intent to have an attorney before it goes very much further, that within a short time after he made that statement he was initiating conversations in spite of the

officer's replying to him, "I can't talk with you," and that I think that when I look at the total context of this, that there was, in fact, a change of this man's mind, that it was not brought on by any persuasion or argumentative kind of state-

[82]

ments that were improper in any way and that the statements finally made to Officer Rainey — or, to Corporal Rainey were voluntary and followed a waiver and a knowing waiver of his right to remain silent * * *.

* * * * *

Now, is there anything I have overlooked?

MR. BASSETT: You overlooked one thought I had, your Honor. I know better than to argue with the Court and I have no inclination to. I just want to sharpen my motion against

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Officer Rainey's testimony. There would be no occasion for him to give a warning Monday morning at the polygraph. There would be no occasion for it.

THE COURT: Well, the testimony shows that —

MR. BASSETT: He agreed to take a polygraph, but there would be no reason for Officer Rainey to give him a warning. He was only there — he qualifies as a polygraph examiner and he was there for a polygraph. Now, if he is going to go away from the polygraph and interrogate him

for a confession, that isn't what the defendant went there for. I just want to get that into my motion.

THE COURT: All right. I did miss making a ruling on that and I don't find that there was an attempt to persuade or to talk him into making a statement. There was just a flat statement to the effect, "In my opinion you haven't been truthful regarding driving," and that there was — at that point the defendant said he wanted to be truthful now, that this was not, in effect, interrogation and I think that once a waiver occurred anyway, that that eliminates many of the problems, so I think that adequately discusses the issues and states the findings so that a reviewing court —

MR. BASSET: Thank you, your Honor.

THE COURT: — can review. * * *

PRETRIAL EXHIBIT 2[2] (TRIAL EXHIBIT 4)[3] TRANSCRIPT OF TAPE-RECORDED INTERVIEW

[September 14, 1980]

(Inaudible conversation while tape recorder being set up.)

CPL. HAYES: Okay, I'm going to set that right there. Jim, I want to advise your conversation being recorded on tape. [*sic*] Do you understand that?

JAMES BRADSHAW: Yes, I do.

Q Okay, and we'll have to talk loud, so . . .

A All right.

Q We can get recorded there. Okay, we're at the uh, Rockaway Police Department, and the time I have, according to my watch, is approximately 8:42. I might be a little bit fast. I'm going to . . . Okay, I'm talking to Mr. . . . (inaudible)

A JAMES EDWARD BRADSHAW.

Q James Edward Bradshaw, currently staying at his grandmother's?

A Yeah, right, the time being I . . .

Q Yeah, grandmother's place here in Rockaway.

A Uh huh.

Q And intends on going to 630 Tualatin, St. Helens, tonight.

A Yes.

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[2] *See* pp. 13-14, above; Tr. 19-20.

[3] Tr. 121-122.

Q Okay.

A Yes I do.

Q Uh, Mr. Bradshaw, I want to advise you that you don't have to talk to me. It's just a, it's a formal investigation, but you still have certain rights. And that you have the right to remain silent. Anything you say or do can and will probably be used against you in a court of law. You have the right

[2]

to have an attorney present while being questioned, and if you cannot afford an attorney and meet certain requirements set by the court, the court will appoint you one to represent you. Do you understand those rights?

A Yes, I do.

Q I'm talking to Mr. Bradshaw regarding two investigations, one involving an assault which he reported occurred to him last night, investigated by Officer Buxton and Rockaway Police Department; the investigation of a fatal accident which was discovered this afternoon, victim, last name is REYNOLDS, first name is LOWELL CLIFFORD, and the accident occurred on Hwy 101 near milepost 48. Do you understand what we're talking about here?

A Yes, I do.

Q Okay. Is the statements and the conversation having made with me, is it being made at your own free will?

A Yes, it is.

Q You're not under any duress . . .

A No (inaudible)

Q Or any threats or anything of that nature?

A No.

Q You voluntarily accompanied me down here to Rockaway Police Department?

A I voluntarily . . .

Q Okay.

A I'm willing (inaudible)

Q You're not in custody, do you understand that?

A All right.

Q You can, you have a right to leave at any time. Do you understand that?

[3]

A Yes, I do.

Q Okay, good. Have you been drinking today?

A Yes, I have.

Q Do you feel what you've had to drink? Are you under the influence?

A No, I'm not. I've only drank three, maybe four beers at the very most.

Q Okay.

A All four of them was 16 oz. containers of Olympia.

Q Uh huh. That's been all day long?

A All day long.

Q Okay, so you don't think that your judgment or whatever statement you make tonight is being affected by what you've had to drink?

A No, I don't.

Q Okay. Now, I want you to go through the events that happened yesterday, at uh, when you had contact with Lowell, when you first had contact with Lowell Reynolds, and what happened all the way through until you were contacted by Officer Buxton on the assault case, approximately 8:15. Can you tell me what time you first contacted Lowell yesterday?

A I contacted him at, let's see, he got off work at 5:00. I caught him coming home at 5:30, and I asked him if he wouldn't like to drink a little bit of whiskey.

Q Okay.

A He said yes, that it'd be all right for a little while, because, then he had to go call his girl friend, because he's supposed to meet his girl friend.

[4]

Q Do you know where his girl friend works?

A No, I didn't even know his girl friend, you know, last night was the first night I'd ever met her.

Q Okay . . .

A I'm presuming that was his girl friend, I'm not for sure.

Q Okay.

A You know. And, so I walked up the liquor store, and I picked up a pint and a fifth of whiskey, Black Velvet . . .

Q Uh huh.

A And wait, when I returned back up to my

grandma's place, well we waited for her to get home, because she'd went out for a ride with one of her friends earlier.

Q Was that you and Lowell waited for her to get home?

A Yeah. Me and Lowell both sat there at Grandma's table and waited for her.

Q Uh huh.

A And then after she came home, well me and Lowell went over, and we was drinking some whiskey.

Q What time did she come home? Do you remember?

A I think it was shortly, just a little bit before 6:00.

Q Okay.

A (Inaudible)

Q So it hadn't been too long after you got there?

A No, it hadn't been too long after that. And we went over and we was . . .

Q Where did you go?

[5]

A Over to Lowell's, at Lowell's, were at the cabin right next to my grandmother's.

Q Okay, so your grandmother owned some cabins? Is that . . .

A Yes, she owns a whole lot up through there.

Q And Lowell rents one of them?

A Yes.

Q Is that Cabin #1?

A I, uh, I think so but I wouldn't swear . . .

Q Okay, it's the one right next to the house there.

A Yes.

Q All right.

A Right next to the house, the same one you guys . . .

Q Does Lowell rent that cabin with anybody else, or does he live by himself?

A He lives by himself as far as I know.

Q Okay.

A He pays $75 a month and that's where he stays, you know.

Q Okay.

A And, anyway we was, we was over there and we was drinking whiskey and everything. He went down to the phone booth to call his girl friend, but, I presume it was his girl friend that was there.

Q What time did he go down to call his girl friend?

A It was, I'd say at least 6:45, anyway, around ten till seven, somewhere right around in there, that he went down and called her.

[6]

Q Uh huh.

A And shortly about, after that, about 20-25 minutes later, well these two girls come up to the house.

Q Were they by themselves?

A Yes, they was, when they come in.

Q Okay, do you know their names?

A I know one of them is JULIE or JUDY one up at, the other one is, as I can recall I think her, I think she said her name was KIM or KIMBERLY, but I'm not . . .

Q Okay.

A I'm not really for sure now.

Q Was this the one you would identify as, you thought was her girl, was Lowell's . . .

A Was Lowell's girl friend, yes. Yes, I would.

Q Okay. Did he mention any time during the evening this was his girl friend?

A He said, well, all he said that he was going to go down to the phone booth and call his girl friend up.

Q Did he . . .

A That he had to go down and call his girl friend.

Q Uh hum.

A So he left me there at his apartment and . . .

Q How long was he gone?

A I'd say not more than 10 minutes.

Q Okay.

A You know. And he come back up, and we was setting there and we was listening to some rock and roll

[7]

music and looking at TV at the same time and drinking whiskey.

Q Uh huh.

A Then these two girls appeared, and I was, I was standing in front of a set of barbells or a hand barbell, you know, one that you can pick up and do whatever you want

to do it with[*sic*], and I was standing there talking to her. And then these two guys come in.

Q Now, who are these two guys?

A That's what I'm not really for sure.

Q Uh, you mentioned some names earlier who you thought . . .

A BASH is who I think it was.

Q Bash?

A Bash.

Q Would that be DAVID BASH?

A I, that's what I'm not for sure, because all I heard is, just before I got hit in the head, I heard somebody say, "Bash, don't do it." And then, that's when I lost everything.

Q Okay. How long had these two guys been there?

A Not more than 15 minutes, I think.

Q Okay . . .

A I'd say anyway, you know, that they hadn't been there no longer than 15 minutes at the time being.

Q During the period of time that uh, these two girls and these two guys were there, do you recall what, what happened when all, when all six of you were there. You had two guys, two girls, you, and Lowell. Were you just drinking whiskey or . . .

[8]

A All right, the two girls come in . . .

Q Uh huh.

A Shortly after Lowell come back from presumably calling this girl friend . . .

Q Uh huh.

A Well, these girls come in, and we was setting there, and we was chit chatting around and having a good time from what I thought. Then there was a knock at the door, and there was two guys that come in, and we was standing there, and this one, that I presumably take it for that it was Bash, said, "Well, I'm going to go over, and I'm going to do the old bitch in." And I go, "Who . . .

Q Now, who, who's he referring, yeah, who does he . . .

A Well (inaudible).

Q (Inaudible)

A I was sitting there, and I'm going, I was going, "Well, who's this old bitch that you, that you're saying?" And he goes, "IRMA STOCKDALE over there." And I go, "Over my damn, dead body," I said, "You're going to have to put me out before you do it." And evidently he took me at my word, because he busted my head open, he knocked me out.

Q Why was he going to do Irma in?

A Well, she, I guess he used to live there, or something, and he owes her $300. And I guess that she was going to garnishee his wages or something.

Q Uh huh.

A You know, I'm not really for sure what, what the deal is between him and her. But, anyway right there at

the last, just before I got hit, I heard somebody holler out, "Bash, don't do it,"

[9]

Q Um hum.

A And then shortly after that, while I was out, and I went to Tillamook up there at the hospital, and the doc up there told me that if it would have been just a little bit harder of a blow, it, it would have cracked my skull.

Q Uh huh.

A Then . . .

Q Where's you get hit now?

A Right . . .

Q Okay, I can . . .

A There.

Q Right in back of the head there, okay.

A I got hit in the back of the head, and I tell you, I still don't know what I, where I (inaudible)

Q Clear down here, almost level with your ears, right . . .

A Yeah.

Q Just above the ears, there.

A Yeah, just, just above, probably about right in the middle, you know. I haven't ever looked at it yet.

Q Yeah.

A You know, I really . . .

Q Do you have any idea what you were hit with?

A I think it was tire iron[*sic*].

[10]

Q Un huh.

A You know, but I'm (inaudible)

Q What makes you think that?

A Well, I'm going from what the doc told me last night.

Q Uh huh.

A You know, I got the slip of paper or whatever you call it that the doctor writes out, you know . . .

Q Uh huh.

A And he circled it, and he, he told me to look out for, if I started bleeding out of the ears, or if liquid, clear liquid started coming out of it, he said for me to get back up there, because I had some type of thing that was going on with me.

Q Uh huh.

A I forget what he called it, you know, he used great big old long words.

Q Uh huh.

A And I'm a school dropout, so I'm not fairly used to them.

Q Well, I don't think even those of us who go to school understand those words.

A Yeah, he told me, he said, "If you have any problems at all, like stiffening in your neck, or getting dizzy, or blacking out, and feel like going to sleep," he said, "if you got somebody around you, have them wake you up, one, one to two hours apart all night long," you know, because

he didn't want me to go to sleep and going into a coma.

Q Uh huh.

[11]

A You know, I guess it, it was that bad.

Q Okay. When did you contact Officer Buxton?

A I didn't. There was a guy there . . .

Q At the hospital?

A No, the, the officer, this uh , Larry uh, what the hell was his last name, MOOREHEAD, I think it was, I'm not really for sure. He's an older feller, and he was staying up there with Granny. That's who she took the ride with earlier. And he called a cop, and then this officer here, he took and called the ambulance.

Q Okay so . . .

A From what I, from what I understand . . .

Q You were let, now how did you, did you walk over to your grandmothers's place, or did they . . .

A No, from what, from what my grandmother tells me, I walked right outside the door, and I fell on the ground. And that's where I was.

Q Who discovered you there?

A Well, she said that she was sitting there and she'd seen Lowell go running up, so she sent this Larry Moorehead, or (inaudible) . . .

Q She saw Lowell go running by?

A Yeah, Lowell went, she said Lowell went running by, and he wasn't wasting no time going by.

Q Which way was he running?

A He was running right up the street to the apartment right, you know, all the way down, you know.

Q Hum. So, He'd be running towards the hills or (inaudible) . . .

[12]

A Yeah, you know, where they're doing all that logging stuff up there. He went running towards that way.

Q So she thought something was the matter?

A Yeah, so she sent that Larry out there, and he come out there and looked at me. And I had a red shirt on last night, and, it's pretty well bright red one . . .

Q Un huh.

A But it was soaked with blood and this Larry . . .

Q Where's that shirt right now?

A It's laying upstairs back there at my granny's, you know.

Q Okay. Uh huh.

A When we go back there, I'll give it to you, you know . . .

Q Okay.

A And you can see what it looks like and stuff.

Q You know, you know what your blood type is?

A No, I'm not really for sure.

Q Okay.

A You know, I've had a few transfusions, but I don't know what that does either, you know, I don't know if they have to use the same blood or what, you know, I just . . .

Q Uh huh.

A And stuff. I tell you, I really don't know what, what went on last night.

Q So, from the point that you were hit you were knocked out (inaudible) . . .

A I was unconscious, and . . .

[13]

Q When you came conscious there was nobody around?

A When I came conscious I was laying in the back of the ambulance.

Q Oh, Okay.

A And I grabbed ahold of the ambulance driver, and I go, "Well, where we going?" Not the driver, but the guy that sets in back with you . . .

Q Uh huh.

A You know. I go, "Where we going?" and he goes, "You're going to go to the hospital. I just want you to lay down and be calm about it," because he said, "You got a very, very bad cut on the back of your head."

Q Uh huh.

A And, I don't know . . .

Q (Inaudible)

A You know. From there, from the time I was hit in the head in Lowell's place, I really don't know what went on, you know.

Q Okay.

A That's the reason why I asked, you know . . .

Q Yeah.

A That, I need a couple of days to think things over.

Q Sure. Now, do you uh, remember some beer that was there, uh, you said that was drank last night, where did this beer come from?

[14]

A The Olympia beer that was there? I went down to the store . . .

Q There was a Schlitz and there was an Oly.

A There was a Schlitz?

Q Yeah, Schlitz bottle sitting on . . .

A I don't know where the Schlitz come from, because I drink Olympia myself.

Q Uh huh. Did you buy . . .

A And . . .

Q Buy some . . .

A Yes. I went down to the store earlier that day, around about 4:00 or 4:15, and I picked up a six-pack of Olympia. And I was sitting there drinking it, and then when Lowel' got off work, I asked him if he wouldn't like a beer, and he goes, "Yeah," and we got sitting over there and got talking about whiskey . . .

Q Uh huh.

A And stuff, and I asked him if he felt like drinking a little bit of whiskey, and he said yes. So that's when I went down to the liquor store and bought a fifth and a pint.

Q Uh huh.

A (Inaudible)

Q Do you know how old Lowell is?

A I think that, I'm not really for sure, but I think he said he was only 20 years old.

Q Yeah. That's how old he is.

A You know, and that's the reason why I asked the officer there that, if there'd be any charges brought against me, you know, for buying a minor alcohol.

[15]

Q This is possible.

A (Inaudible)

Q It's very possible.

A If it is, I'm willing to face them, you know.

Q Okay. Well, we'll work with that later, all right?

A I mean because . . .

Q The thing is we want to determine exactly what happened last night. So, in going over your mind, as best you can remember, the people that were in the apartment at the time you got hit on the head was Lowell . . .

A Uh huh.

Q A girl named Julie or Julia, something like that . . .

A Judy or Julie.

Q Judy, another girl who you thought's name was Kim . . .

A Or Kimberly.

Q Or Kimberly, who you assumed was his girl friend . . .

A Uh huh.

Q And two other men, one who you assume by the name of Dash?

A Yes.

Q And . . .

A That's what I heard just before I got hit, somebody hollered out, "Bash, don't do it."

Q Okay, and what about, did the other guy ever identify himself?

A The other guy, I never heard his name, I never even met him, you know, they just walked in and . . .

Q Uh huh.

[16]

A And I had Lowell, he was setting here in the chair, and this girl was setting up on the arm of it, and then there was this guy setting over, and then Bash is next door here, and this Julie or Judy, whichever one that she is, was setting on the bed, and I was standing in front of her, in front of the bellbars[*sic*].

Q Okay. Now, do you remember what time they came again?

A I'm, I'm not really for sure. I'd say it was around 7:00 or 7:30 . . .

Q Okay.

A When they come in, you know, (inaudible)

Q And the officer, or, uh, he arrived at 8:15. Okay.

A That's what he told me earlier, that that's when he arrived out of his report.

Q Uh huh. Okay. Do you know what kind of rig that Lowell drives?

A Lowell drived a, I think it was a '71 Ford Courier or Corrier . . .

Q Yeah.

A Whatever that . . .

Q Do you remember what color it was?

A It was pure white.

Q Okay. Do you know how long he'd had that rig?

A Well, he'd had a '63 Chevrolet Impala, and he was telling me last night that he just traded in, so I would imagine he probably had it probably about a month. He said something about that he was still making payments on it.

Q Uh huh.

A You know, so . . .

[17]

Q Have you ever ridden in that rig?

A No I haven't, Lowell, last night, well I'd met him last weekend, last Saturday night . . .

Q Uh huh.

A I met Lowell. That's when my cousins had brought me down . . .

Q Uh huh.

A To Grandma's, granddaugther, you see, I'm not really Grandma's grandson . . .

Q You just call her Grandma.

A I call her Grandma, you know . . .

Q Uh huh.

A Because it, it helps her out and stuff. And they'd brought me down here, and we got ready to pull out Sunday morning, and she asked me if I couldn't stay around because she thought that there was people around snooping around her and breaking into her house and stealing this and stealing that, you know . . .

Q Uh huh.

A Which things has come up missed and have been returned.

Q Uh huh.

A So I was staying there, and then last night was the second time I met Lowell.

Q Okay.

A You know, so I . . .

Q So you'd never had an opportunity to go for rides with him?

A No. He asked me last night if I wanted to go for a ride, and I go, "Naw, I think I better stay here since I've been drinking this much," you know.

[18]

Q Uh huh. Have you, do you have a driver's license in Oregon?

A No, I haven't, haven't a driver's license because I've been, I'm an habitual traffic offender.

Q Okay, so you (inaudible) . . .

A (Inaudible) black ice, and I run an officer off the

road, State highway patrolman off the road. But I got this ID card here.

Q Okay.

A (Inaudible)

Q You're a habitual in the state of Oregon?

A Uh huh.

Q Okay, how long . . .

A Outside Oregon I can drive.

Q Yeah. How long have you been suspended in Oregon as habitual offender?

A I'd say it was, 26, not really for sure, but I think Judge Donald Kalberer, down there in Columbia County, typed in a, suspended me the 26th of December of '79.

Q (Inaudible)

A I'm pretty sure that's when he did it.

Q Ten years?

A Yeah.

Q Okay.

A For ten years.

Q And that's why you don't drive?

[19]

A Yeah.

Q Okay.

A (Inaudible) I respect the law enough that I don't want to drive.

Q Uh huh.

A Yeah. I tried it before and I've got, I've been (inaudible) for several tickets and stuff and (inaudible)

Q Okay.

A And then when they made it mandatory for, for your damned insurance in Oregon, which I'm glad that they did, but, I have never bothered driving since then, you know, I haven't even bothered trying to buy a car.

Q Uh huh. Okay. Is there anything else that happened this evening that uh, or happened yesterday evening that you happened to think about?

A Nothing that I know of, only that me and Lowell was partying last night, you know.

Q Uh huh. Partying pretty heavy, huh?

A Well, not, not what . . .

Q Well . . .

A You really call heavy . . .

Q (Inaudible) well, a fifth and a . . .

A We was setting around.

Q Pint of Black Velvet and some beer would be . . .

A Yeah.

Q To me would be pretty heavy.

[20]

A Well, yeah.

Q Maybe not to you, but to me.

A I guess it would be, really, you know . . .

Q Between the two of you.

A But other than that . . .

Q How much did those other people drink?

A Well, the girl I was talking to, she was, she was taking her good share out of the bottle, and uh . . .

Q Uh huh.

A I mean, she'd just tip it up and "gluck, gluck" [*sic*] a couple of times and . . .

Q Do you feel that you, you were pretty (inaudible)

A I feel I had a pretty good . . .

Q (Inaudible) buzzing

A Head going last night, you know.

Q Okay, then you got hit on the head, and that made things worse, huh?

A Yeah, it did, because when the doc up there was going to sew me up, I told him I didn't need by head numb because I was already numb enough, you know.

Q Uh huh.

A 'Til after he went to stick that needle in my head, and that . . .

Q Made (inaudible)

A That's when I say, "Hey, why don't you deaden that thing back there a little bit," you know . . .

Q Uh huh.

[21]

A Him himself, he thought that I'd had a little bit too much to drink, you know.

Q Do you remember what doc treated you?

A Uh, not right off, I don't. I got the paper at home with his . . .

Q That's all right, yeah.

A Names and stuff on it. I'll, I'll give it to you and the shirt both, you know.

Q Uh huh.

A If I can help you guys out any, you know, because . . .

Q Sure.

A I want to help you guys out as much as anything because . . .

Q Well, we're just trying to determine what happened last night, you see.

A I think that there was foul play somewhere.

Q What makes you think that?

A I don't know. Why would, why would Lowell split out of his own apartment, take off running up, running up between the apartments like he's a bat out of hell?

Q I don't know either (inaudible)

A Why didn't he go out and get in his truck and take off in his truck?

A (Inaudible)

A I figure that since, that they was going to go over and do whatever they had planned in their head to do to Granny over there.

Q Uh huh.

A I figured when they hit me in the head, you know, I, I don't want to say for sure, but I think that it

[22]

was Lowell that har-, hollered it out, "Bash, don't do it." And then that's when I lost everything.

Q Uh huh.

A But I think what they thought is that they killed me last night. Because the doctor said, you know, just like the doctor said, I said it earlier too, he said if there had been very much harder of a blow, it would have cracked my skull.

Q Uh huh.

A Anyhow, that's the reason why when the city officer come up here, and he told me they'd found Lowell's pickup over an embankment and he was dead.

Q Uh huh.

A Damn, I don't know. I, I really don't know. I really don't.

Q Well, that's what we doing, you know, is trying to find out what did happen.

A I hope to hell that, that if somebody did run him off the road and kill him on purpose, I hope that they hang.

Q Uh huh. Well, if they did, then hopefully we can catch them and due justice will be served.

A I hope so. I don't mean just go into a damned insane asylum or something for a year or anything, because Lowell was one decent guy. He was a decent guy. He was a butcher down here at this store, and . . .

Q Uh huh.

A He'd do damned near anything for my granny.

Q Uh huh.

A He'd bring her food home to her, so she wouldn't have to go up to the store or anything else, you know.

Q Yeah. Pretty good to her then?

[23]

A He was a damned sweet guy. You know, I'm not saying because I'm queer or anything like that, I'm just saying because I think he was a decent guy.

Q Uh huh.

A Myself, I think that, I don't really know. It hurts me to even know that he got killed last night because I was, I was waiting around there all day long so he'd come home so I could really find out what was going on, because he was the only witness I got.

Q Uh huh.

A Because I don't, you know, I don't even know the two girls that was there, only by their first names. I don't know where they lived or nothing, you know.

Q Uh huh.

A And like I told you earlier, I'm from (inaudible), Missouri.

Q Uh huh.

A You know, that's a little over thirty-six hundred miles from here, so . . .

Q How long have you been back in Oregon?

A Well, I've been back here, let's see, August, let's see, it's September, right? No this is November. What is this month, anyway?

Q Uh, September 14th.

A Okay, I come back August 15th, so tomorrow I'll be here a month.

Q Uh huh.

A Been back in Oregon a month.

Q Okay.

[24]

A Yeah.

Q Did you plan on finding work back here?

A That's what I come out for is to go back to work, hopefully either on a ranch or else find sawmill work or something, you know. I just . . .

Q Are you trained at anything?

A I've got experience in sawmill work, and as a security guard.

Q Uh huh.

A I've worked as security guard, for King Security and Brown Security, down there in St. Helens, Columbia County. And stuff, you know, but.

Q (Inaudible)

I'm going to turn the tape recorder off for a minute, Jim.

A Okay.

Q Okay, I turned the tape recorder back on, Jim, do you understand that?

A Yes.

Q And I turned it off because we were talking, or I was talking to another (inaudible - telephone ringing) Okay, now, we'll try it again here, Jim.

A All right.

Q Tape recorder's back on, and we're at Rockaway

PD, and your rights and all those good things. You understand that?

A All right, yeah.

Q Okay.

[25]

A (Inaudible)

Q I'm going to throw something at you here, Jim, and I'm going to pitch a theory, and I'm going to tell you what I'm going to do. Right now I'm going to place you under arrest for furnishing liquor to a minor. Do you understand that?

A Yeah.

Q Okay. After placing you, you're no longer free to go. You're in custody.

A Okay.

Q Okay. Now, you have the right to remain silent. Anything you say or do can and will probably be used against you in a court of law. Do you understand that? You have the right to have an attorney present while being questioned. Do you understand that?

A Uh huh.

Q If you cannot afford an attorney and meet certain requirements set by the court, the court will appoint you one to represent you, do you understand that?

A Yes, I do.

Q Okay. We've contacted three out of the four people you indicated that was at the apartment last night. All of them have witnesses indicating they were not there. And

it's going to be my theory that you were driving that pickup, ran off the road because you had too much to drink, got scared because you—I'm just giving you my theory. You got scared because you're a habitual offender, and a result of that accident is how you hurt your head. Then you came back and called the police. This is my theory only. It may not be right, but I'm just telling you how I feel about it. Am I close?

A No. You're one hell of a long ways from it.

[26]

Q Okay. Were you in the vehicle last night?

A No, I was not.

Q Even as a passenger?

A I've got witnesses to that.

Q Okay, can you tell me who the witnesses were?

A For one, my grandmother and Larry Moron or Moorehead, whichever one his last name may be.

Q (Inaudible)

A And I do want an attorney before it goes very much further.

Q Okay.

A This is one rap I won't, I won't take . . .

Q Okay.

A (Inaudible)

Q At this point, there's, since you requested an attorney, uh, we will conclude this investigation, all right? Not the investigation, but the interview.

A Sounds fine with me, because this is one thing that . . .

Q Okay. I'm just . . .

(End of tape)

SENTENCE ORDER

[filed February 23, 1981]

IN THE CIRCUIT COURT OF THE
STATE OF OREGON
FOR THE COUNTY OF TILLAMOOK
[Title of case omitted in printing]

This matter came before the Court on February 17, 1981 for sentencing of the above-named defendant on a charge of MANSLAUGHTER IN THE FIRST DEGREE; DUII; DWS. The State appeared by Bradley C. Grove, Deputy District Attaorney. The defendant appeared in person and with Alton Bassett, attorney. The Court, having considered the matter,

NOW, THEREFORE, IT IS HEREBY ORDERED that on the charge of Manslaughter In the First Degree defendant is committed to the legal and physical custody of the Corrections Division for the State of Oregon for a period not to exceed seven years with a minimum period to serve of three years; IT IS FURTHER ORDERED that on the charge of DUII defendant is to serve five months and six days in the Tillamook County jail with credit for time served; IT IS FURTHER ORDERED that on the charge of DWS defendant is committed to the legal and physical custody of the Corrections Division for a period not to exceed three years, to be concurrent with the sentence in Count 1.

Dated February 23, 1981.

[Signature omitted in printing]

OPINION OF OREGON COURT OF APPEALS

[Opinion set forth in full as Appendix A, pages 10-13 of the printed petition for certiorari]

ORDER OF OREGON SUPREME COURT DENYING REVIEW

[Opinion set forth in full as Appendix B, page 14 of the printed petition for certiorari]